

HB 2236 -- Private Attorney Retention Act

Sponsor: Cox

This bill establishes the Private Attorney Retention Act which specifies the procedures a state agency or state agent must follow when retaining a lawyer or law firm to perform legal services on behalf of the state if the anticipated fees and expenses for the services will exceed or can be reasonably expected to exceed \$100,000. In its main provisions, the bill:

(1) Prohibits any state agency or agent from retaining a lawyer or law firm until an open and competitive bidding process has been undertaken;

(2) Prohibits a state agency or agent from entering into a contract for the legal services without the opportunity for legislative review of the terms of the contract;

(3) Requires a state agency or agent to file a copy of a proposed contract with the Chief Clerk of the House of Representatives and provide a written statement that identifies:

(a) The reasons for retaining private counsel and the consideration of alternatives;

(b) The open and competitive bidding process undertaken for the proposed legal services;

(c) The reasons for the selection of the lawyer or law firm that is the proposed contracting party;

(d) The past or present relationship, if any, between the lawyer, law firm, or any partner or other principal in the law firm and the state agency or agent of the proposed contract; and

(e) The reasons a contingent fee arrangement is believed to be in the state's interest if the contract includes a provision for fees contingent on the outcome of the legal proceedings and any efforts made to obtain private counsel on a noncontingent fee basis;

(4) Requires the chief clerk, with the approval of the President of the Senate and Speaker of the House of Representatives, to promptly refer any proposed contract and written statement to the appropriate committee for review;

(5) Specifies that within 45 days after the filing of the proposed contract the committee may hold a public hearing on the contract and must issue a report with any recommended changes to

the referring state agency or agent whether or not a public hearing is held;

(6) Allows the state agency or agent to enter into a proposed contract if the committee recommends no changes to the contract within 45 days of the initial filing with the chief clerk;

(7) Specifies that, if the committee's report recommends changes to the proposed contract, the state agency or agent is required to review the report, prepare a revised contract as deemed appropriate, and file a copy of the revised contract with the chief clerk;

(8) Specifies that, if a revised contract does not contain all the changes recommended by the committee, the state agency or agent is required to include with the revised contract a letter stating why the recommended changes were not adopted and requires the chief clerk to refer the letter and revised contract to the committee;

(9) Allows the committee to hold additional hearings and issue additional reports if a revised contract does not contain all the changes recommended by the committee and allows the state agency or agent to enter into the revised contract not earlier than 45 days after the filing of the letter and revised contract with the chief clerk;

(10) Requires the proposed contract and written statement to be filed with the Governor and the chief clerk if the legislature is not in session. The Governor must establish an interim committee to act as the reviewing committee consisting of five legislators, one appointed by the Governor, Speaker of the House of Representatives, President Pro Tem of the Senate, Minority Leader of the House of Representatives, and Minority Leader of the Senate;

(11) Specifies that the Governor must establish a committee consisting of the same five legislator appointments as the interim committee to consult with the state agency or agent to establish an expedited schedule for review if the state agency or agent states that time exigencies require counsel retention prior to the time periods specified for review;

(12) Requires outside counsel retained by the state on a contingent fee basis to provide to the state, at the conclusion of the legal proceedings, a statement of the hours worked on the case, expenses incurred, the aggregate fee amount, and a breakdown as to the hourly rate based on the hours worked divided into the fee recovered, less expenses; and

(13) Prohibits the state from incurring fees and expenses in excess of \$250 per hour for legal services and requires any proposed contract with an hourly rate of more than \$250 per hour to reduce the fee amount to \$250 per hour.